IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2403 OF 2004

Soud Ahmad Juber Ahmad Khan,)
Age 42 years, Occ: Business,)
R/at Sanjay Gandhi Nagar,)
Beside Masjid, Near Railway Station,)
Ulhasnagar Camp 3.)..Petitioner.

Versus

1. The Commissioner of Police,)
Thane.)

2. The Secretary (Preventive)
Detention) Govt.of Maharashtra,)
Home Department, Mantralaya,)
Mumbai - 400 032.)

3. The Superintendent of Jail,)
Yerwada Central Prison,)
Pune.)

4. The State of Maharashtra.)..Respondents

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Shri Niranjan Mundargi for the Petitioner.

Shri D.S.Mhaispurkar, APP for the Respondents.

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CORAM : R.M.S.KHANDEPARKAR &
P.V.KAKADE, JJ.

DATED : 1st March, 2005.

ORAL JUDGMENT : (Per R.M.S.Khandeparkar, J)

1. Heard. Perused the records.

2. The petitioner challenges the order of detention bearing No.DCB/PD/MPDA/12/04 dated 16th September, 2004 issued by the respondent No.1 in exercise of powers under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981, hereinafter referred to as "MPDA Act" read with the Government Order, Home Department (Special) No.DDS.1303/10/SPL.3(B) dated 23rd June, 2004 with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order.

3. The detention order is sought to be challenged on two grounds. Firstly, on account of failure on the part of the respondents to supply material documents relied upon by the detaining authority for arriving at the subjective satisfaction regarding the need for issuance of detention order against the detenu, and secondly that there was inordinate delay between the proposal for clamping detention order and actual issuance of detention order which has resulted in snapping of live link between the detention order issued and the purpose for which it was sought to be issued, and further that there is no satisfactory

explanation for such delay.

4. The petitioner is brother of Shri Jamil Ahmed Juber Khan @ Don, who has been detained under the impugned order of detention. The proposal for detention of the detenu was moved on 23rd July, 2004 and the order of detention was passed on 16th September, 2004 and was executed on the same day.

5. While assailing the impugned order of detention on the first ground of challenge, the learned Advocate appearing for the petitioner has submitted that the grounds of detention refer to the previous detention of the detenu under the provisions of MPDA Act, being one of the grounds for arriving at the subjective satisfaction by the detaining authority for clamping detention order against the detenu under MPDA Act. However, the ground neither discloses the period of such earlier detention nor the detenu was supplied with any material in relation to any such earlier detention, and therefore it has resulted in affecting constitutional right of the detenu guaranteed under Article 22(5) of the Constitution of India. It is the contention of the learned Advocate for the petitioner that though the list annexed to the grounds refers to a detention order dated 12th May,

1998 and copy of such order was furnished to the detenu at the time of service of the detention order, there is no indication in the grounds for detention that earlier detention spoken of relates to the said order dated 12th May, 1998. The detenu is entitled to know the grounds of detention with necessary clarity in that regard, so as to enable him to make appropriate representation which is his fundamental right guaranteed under Article 22(5) of the Constitution of India and that itself being violated, the order of detention is to be held as bad in law. Reliance is sought to be placed in the decision of the Apex Court in the matter of **Sophia Gulam Mohd.Bham v. State of Maharashtra & Ors.,** reported in 1999(6) SCC 593 while contending that the concept of "grounds" used in Article 22(5) of the Constitution of India not only includes conclusions of facts but also all materials sought to be relied upon for conclusions by the detaining authority.

6. The learned APP, on the other hand, has submitted that, undisputedly, the detenu was served with the copy of the earlier detention order dated 12th May, 1998 along with the grounds in support of detention order and it is nobody’s case that the detenu was detained prior to the present detention

under any order other than the said order dated 12th May, 1998. Obviously, therefore, the detenu was fully aware of the fact that the reference to the earlier detention in the grounds of detention relates to the detention under order dated 12th May, 1998 and copy thereof being duly served upon the detenu, he was not prejudiced in any manner nor there was any infringement of constitutional right of the detenu guaranteed under Article 22(5) of the Constitution of India in relation to his entitlement of making an effective representation against the order of detention. The learned APP has sought to rely upon the decision in the matter of **Sanjay Kalpanath Pandey v. Shri M.N.Singh & Ors.,** reported in 2001 ALL MR(Cri) 2241.

7. It is not in dispute nor it can be disputed that the grounds in support of the detention do refer to the earlier detention of the detenu. Relevant portion of the grounds in support of the detention in that regard reads that "though, you were detained once in the past under the provisions of MPDA Act 1981, there is no effect on your criminal activities." Undoubtedly, therefore, there is a clear reference, and reliance is placed by the detaining authority on the past history of the detenu while arriving at the

subjective satisfaction regarding need for the detention of the detenu under MPDA Act. The contention of the learned APP that the said reference merely is a preamble, is totally devoid of substance. The preamble may not form the grounds for arriving at the subjective satisfaction by the detaining authority. Undisputedly, the grounds which have been recorded in the matter are to be found in paragraph 3 whereas the above-quoted finding of the detaining authority is to be found in paragraph 4. In fact, the paragraph 4 clearly opens with the sentence "from the instances quoted above in para 3(a) and (b)(i) and (ii) of the grounds of detention, I am subjectively satisfied that you are a criminal goonda of violent character, indulging in violent and terrorising activities in the limits of Central Police Station, Ulhasnagar Camp No.03 of Thane Police Commissionerate.....". Thereafter, the detaining authority has referred to habitual criminal activities on the part of the detenu and further observed that "the action taken against you under the existing law of the land proved to be ineffective and insufficient to curb your violent as well as terrorising activities." The said observation has been followed by a reference to the past history of the detenu, quoted above, and thereafter, the detaining

authority has observed that the detenu himself may again indulge in similar activities of serious nature, disturbing the maintenance of public order. Obviously, therefore, the observations regarding past history of habitual criminal activities on the part of the detenu quoted in paragraph 4 of the grounds in support of the detention can, by no stretch of imagination, be held as preamble for the grounds of detention. It is, undoubtedly, one of the instances relied upon by the detaining authority to arrive at the subjective satisfaction regarding the need of detention order against the detenu. Being so, the decision of the Division Bench in **Sanjay Kalpanath Pandey's case (supra)** is of no help to the respondents.

8. The decision of the Apex Court in **Sophia Gulam Mohd.Bham's case (supra)**, is on the point of requirement of inclusion of basic facts in the grounds in support of the order of detention. Ruling clearly is to the effect that the expression "grounds" in Article 22(5), not only includes the conclusion based on the facts arrived at by the detaining authority but would also include the basic facts which are necessarily to be recorded in the grounds for detention. Ruling further clarifies that "basic

facts" are different from subsidiary facts or further particulars. In other words, while it is obligatory for the detaining authority to mention the basic facts necessary for arriving at the conclusion regarding the subjective satisfaction for issuance of an order of detention against the detenu. The same rule may not apply in relation to subsidiary facts or further particulars in relation to the basic facts. Albeit, this does not mean that necessary particulars for arriving at the subjective satisfaction are not to be disclosed to the detenu but the method for conveying such facts to the detenu may depend upon the facts and circumstances of each case and may not necessarily be enumerated in each and every case in detail in the grounds in support of the detention order. There may be a case where, if the basic facts are disclosed in the grounds of detention and they are sufficiently supported by the materials and the same are made available to the detenu, there can hardly be an occasion for the detenu to grumble about non-compliance of Article 22(5) of the Constitution of India. Obviously, the case in hand is one of such cases. The learned APP is justified in contending that it is nobody’s case that the detenu was detained under MPDA Act for more than one occasion prior to the present detention. Obviously, therefore, the detenu

very well knew that he was detained prior to the detention in terms of the order dated 12th May, 1998 and undisputedly, copy of such order was duly furnished to the detenu and there was a clear mention of the said order in the list of documents annexed to the grounds in support of the detention order. Being so, there is no substance in the contention of the petitioner that there was any lapse on the part of the detaining authority in revealing to the detenu the necessary materials relied upon for arriving at the subjective satisfaction or that the detenu in any manner was prejudiced on account of any act in that regard on the part of the detaining authority. Once it is clear that the reference to the basic facts regarding the previous detention of the detenu was revealed from only one order, i.e. dated 12th May, 1998, and the same was clearly referred in the list of documents annexed to the grounds in support of the detention order and copy thereof was made available to the detenu along with service of the order of detention, the contention of the petitioner about non-supply of material documents or infringement of his constitutional right guaranteed under Article 22(5) of the Constitution of India has to be rejected as devoid of substance, and for the reasons aforesaid, we do not find any substance in the first ground of

challenge to the order of detention.

9. The second ground of challenge to the detention order relates to the delay on the part of the respondents in issuing the detention order after the proposal in that regard was moved. The last incidence which has been taken into consideration for arriving at the subjective satisfaction regarding need for issuance of detention order against the detenu is the in-camera statement of the witness "B", a grocery shop owner, recorded on 20th July, 2004. It is not in dispute that the proposal for issuance of detention order was made on 23rd July, 2004 and the order was issued on 16th September, 2004. As regards the period of nearly fifty-five days taken for issuance of detention order, the explanation has been furnished by the detaining authority in its affidavit dated 24th January, 2005. It is disclosed that the sponsoring authority had forwarded its proposal for issuance of detention order on 23rd July, 2004 which was received in the office of the detaining authority on 7th August, 2004 through proper channel. After careful perusal thereof, A.C.P.(Crime), Thane, prepared a detail note and forwarded the same to the detaining authority on 19th August, 2004. During the period from 7th August, 2004 till 19th August, 2004, there

were three holidays i.e. 8th August, 2004, 14th August, 2004 and 15th August, 2004. The Additional Commissioner of Police (Crime) gave his endorsement on 21st August, 2004. On 20th August, 2004, it was a holiday. The proposal thereafter was placed before the detaining authority and on careful perusal thereof, it was approved on 21st August, 2004. The draft grounds in support of the detention order were finalised and typed, and translation thereof in Hindi was prepared and the same was completed by 10th September, 2004. During the said period, 28th August, 2004, 29th August, 2004 and 5th September, 2004 were the holidays. The Additional Commissioner of Police (Crime) gave his endorsement on 11th September, 2004, and forwarded the same to the detaining authority. On 14th September, 2004, the draft of grounds of detention was approved by the detaining authority and the same was sent for typing. There were holidays on 11th and 12th September, 2004. The grounds of detention were duly typed and compared, and again placed before the Additional Commissioner of Police (Crime). The ACP (Crime) on careful perusal thereof endorsed the same on 15th September, 2004 and forwarded to the detaining authority. The detaining authority after carefully going through the same issued the order of detention on 16th September, 2004.

10. It is the contention of the learned Advocate for the petitioner that considering the fact that the last statement of the witness was recorded on 20th July, 2004 and the proposal was moved on 23rd July, 2004, the explanation for delay of about two months for finalisation of the proposal for issuance of detention order sought to be given by the respondents cannot be said to be satisfactory explanation and that itself discloses snapping of live link between the order of detention and the purpose for which it was sought to be issued. He has further submitted that apart from the movement of the proposal from one authority to another, no further details in the matter have been disclosed in the affidavit filed by the detaining authority. The learned APP, on the other hand, drawing attention to the decision delivered by us on 25th February, 2005 in another Petition being Criminal Writ Petition No.2218 of 2004 in **Rupesh Ram Thakur v. Shri S.Chakravarty, Commissioner of Police, Thane & Ors.,** has submitted that the authorities are not required to give day-to-day or minute-to-minute explanation in relation to the time spent from the last incident till the date of issuance of order of detention but has to satisfy the Court that the time spent in the process was reasonable one. He has also

drawn attention to the statement in the affidavit of the detaining authority wherein it has been stated that during the relevant period, there were two other proposals pending in the office and considering the same, according to the learned APP, the time consumed for issuance of order of detention cannot be said to have rendered the detention order to be stale-one.

11. The contention on behalf of the petitioner that the explanation, apart from disclosing the movement of the proposal from one person to another, does not disclose particulars cannot be accepted. The affidavit clearly narrates the purpose for which the proposal was moved from one person to another, and obviously, those details are in relation to the movement of the proposal for issuance of detention order. It cannot be disputed that the detention order cannot be issued as a matter of course and the authority has to take proper care and has to apply its mind, and for that purpose, has to scrutinise the materials at different levels and exactly that has been done in the case in hand and the same is revealed from the explanation given in the affidavit filed by the respondents. It would be therefore incorrect to contend that apart from the movement of the proposal from one person to another, the affidavit does not

disclose the details for which the proposal was moved from one person to another person.

12. Undoubtedly, in the course of such movement, it does disclose that some time was spent at the initial stage when the proposal was received in the office of the ACP (Crime), Thane, and again when the proposal was initially approved on 23rd August, 2004 and till the grounds in support of detention order were finalised i.e. till 10th September, 2004. However, as regards the first period from 7th August, 2004 to 19th August, 2004, the explanation clearly discloses that during the said period, the matter was carefully scrutinised by the ACP (Crime), and in the process, it took some time. It is also a matter of record that the three days, being 8th, 14th and 15th August, 2004, were holidays. As regards the second period from 22nd August, 2004 to 10th September, 2004, the explanation discloses that there were about 73 pages of the documents and about 66 pages were required to be translated in Hindi. Certainly, it took some time and the said explanation cannot be said to be unsatisfactory explanation.

13. It is to be noted that the Apex Court in **Union of India and another v. Chaya Ghoshal and another,**

reported in 2004 AIR SCW 6999, has held that a period of 11 months taken for issuance of detention order from the date of the proposal could not be said to have resulted in snapping of the live link between the order of detention and the purpose for which it was issued. In the said case, the proposal for detention was sent on 4th July, 2002. The proposal for detention was considered by the Central Screening Committee on 18th September, 2002 and after consideration of all the relevant materials, the order of detention came to be passed on 20th November, 2002. After considering the factual scenario of the case, the Apex Court though observed that undoubtedly there was some delay in passing the order of detention, however, did not interfere in the detention order on that count.

14. It is also necessary to lay our hands on the decision of the Division Bench of this Court in **Mohmood Abubukar Marwari v. Union of India & Ors.,** reported in 1982 Cri.L.J. 53 wherein it was observed that "mere lapse of time hardly means anything unless there has, in consequence, arisen or has accrued some equity or right which in justice should not be adversely affected on account of delay." It is to be noted that the delay in issuance of the detention

order and delay in disposal of the representations filed by the detenu in exercise of his right under Article 22(5) of the Constitution of India stand on two different footings. In a given case, the delay in disposal of the representation by itself may prove to be fatal. The same principle would not apply in case of delay in issuance of detention order. In case of any such delay in issuing detention order from the time of the proposal being moved by the sponsoring authority, what is relevant to be seen is whether the same has resulted in snapping the live link between the order of detention and the purpose for which it was sought to be issued.

15. Bare reading of the grounds for detention and the observations made by the detaining authority for arriving at the subjective satisfaction regarding the need for issuance of detention order disclose that the action taken against the detenu under the existing law would prove to be ineffective and insufficient to curb his violent and terrorising activities. Besides, he was detained in jail in past under MPDA Act, however, he did not take any lesson therefrom, nor stopped his criminal activities after his release from the said detention. These observations clearly disclose that the detaining authority had taken into consideration

the past as well as continued conduct of the detenu as being the justification for issuance of detention order and that itself discloses that the live link between the order issued and the purpose for which it was issued had not been snapped on account of the lapse of the period of nearly two months from the date of proposal till the date of actual issuance of order of detention.

16. Indeed in **Rupesh Ram Thakur's case (supra),** after considering the various decisions of the Apex Court, it was observed that "It is to be noted that the respondents are not required to give the day-to-day or minute-to-minute explanation in relation to the time spent from the last incident till the date of issuance of the order. The time spent in the process has to be reasonable one and that itself can be considered as satisfactory explanation regarding the period taken by the authorities for issuance of such order." These observations aptly apply to the case in hand also.

17. For the reasons stated above, there is no case made out for interference in the impugned order of detention of the detenu Shri Jamil Ahmad Juber Khan @ Don, and therefore, the petition fails and is hereby

dismissed. Rule is discharged with no order as to costs.

(R.M.S.Khandeparkar, J)

(P.V.Kakade, J)